

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 236

FINAL READING

Introduced by Johnson, 37; Hansen, 42; Pirsch, 4

Read first time January 10, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health and human services; to amend
2 sections 71-1,133, 71-1,134, 71-1,135, 71-1,135.02,
3 71-1,135.04, 71-1,135.06, 71-1,136, 71-1,136.01,
4 71-1,136.04, 71-1,147, 71-415, and 71-6720, Reissue
5 Revised Statutes of Nebraska, sections 71-107, 71-110,
6 71-112, 71-162, and 71-168, Revised Statutes Cumulative
7 Supplement, 2006, and sections 71-101, 71-102, and
8 71-1,142, Revised Statutes Cumulative Supplement, 2006,
9 as amended by sections 296, 297, and 344, respectively,
10 Legislative Bill 296, One Hundredth Legislature,
11 First Session, 2007; to provide for, change, and
12 eliminate provisions relating to the regulation of
13 perfusionists, optometrists, pharmacy technicians, and

1 in-home personal services; to harmonize provisions; to
2 provide severability; to repeal the original sections;
3 and to outright repeal sections 71-1,135.03, 71-1,135.05,
4 and 71-1,147.34, Reissue Revised Statutes of Nebraska,
5 and section 71-1,147.33, Revised Statutes Cumulative
6 Supplement, 2006.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-101, Revised Statutes Cumulative
2 Supplement, 2006, as amended by section 296, Legislative Bill 296,
3 One Hundredth Legislature, First Session, 2007, is amended to read:

4 71-101 Sections 71-101 to 71-1,107.30, 71-1,133 to
5 71-1,338, 71-1,343 to 71-1,361, and 71-1301 to 71-1354, sections 31
6 to 38 of this act, the Perfusion Practice Act, and the Physical
7 Therapy Practice Act shall be known and may be cited as the Uniform
8 Licensing Law.

9 For purposes of the Uniform Licensing Law, unless the
10 context otherwise requires:

11 (1) Board or professional board means one of the boards
12 appointed by the State Board of Health pursuant to sections 71-111
13 and 71-112;

14 (2) Licensed, when applied to any licensee in any of the
15 professions named in section 71-102, means a person licensed under
16 the Uniform Licensing Law;

17 (3) Profession or health profession means any of the
18 several groups named in section 71-102;

19 (4) Department means the Division of Public Health of the
20 Department of Health and Human Services;

21 (5) Whenever a particular gender is used, it is construed
22 to include both the masculine and the feminine, and the singular
23 number includes the plural when consistent with the intent of the
24 Uniform Licensing Law;

25 (6) License, licensing, or licensure means permission to

1 engage in a health profession which would otherwise be unlawful
2 in this state in the absence of such permission and which is
3 granted to individuals who meet prerequisite qualifications and
4 allows them to perform prescribed health professional tasks and use
5 a particular title;

6 (7) Certificate, certify, or certification, with respect
7 to professions, means a voluntary process by which a statutory,
8 regulatory entity grants recognition to an individual who has met
9 certain prerequisite qualifications specified by such regulatory
10 entity and who may assume or use the word certified in the title or
11 designation to perform prescribed health professional tasks. When
12 appropriate, certificate means a document issued by the department
13 which designates particular credentials for an individual;

14 (8) Lapse means the termination of the right or privilege
15 to represent oneself as a licensed, certified, or registered person
16 and to practice the profession when a license, certificate, or
17 registration is required to do so;

18 (9) Credentialing means the totality of the process
19 associated with obtaining state approval to provide health care
20 services or human services or changing aspects of a current
21 approval. Credentialing grants permission to use a protected
22 title that signifies that a person is qualified to provide the
23 services of a certain profession. Credential includes a license,
24 certificate, or registration;

25 (10) Dependence means a compulsive or chronic need for

1 or an active addiction to alcohol or any controlled substance or
2 narcotic drug; and

3 (11) Director means the Director of Public Health of the
4 Division of Public Health.

5 Sec. 2. Section 71-102, Revised Statutes Cumulative
6 Supplement, 2006, as amended by section 297, Legislative Bill
7 296, One Hundredth Legislature, First Session, 2007, is amended to
8 read:

9 71-102 (1) No person shall engage in the practice
10 of medicine and surgery, athletic training, respiratory care,
11 osteopathic medicine, chiropractic, dentistry, dental hygiene,
12 pharmacy, podiatry, optometry, massage therapy, physical therapy,
13 audiology, speech-language pathology, embalming, funeral directing,
14 psychology, veterinary medicine and surgery, medical nutrition
15 therapy, acupuncture, perfusion, mental health practice, or alcohol
16 and drug counseling unless such person has obtained a license from
17 the department for that purpose.

18 (2) No person shall hold himself or herself out as a
19 certified social worker or certified master social worker unless
20 such person has obtained a certificate from the department for that
21 purpose.

22 (3) No person shall hold himself or herself out as a
23 certified professional counselor unless such person has obtained a
24 certificate from the department for such purpose.

25 (4) No person shall hold himself or herself out as a

1 certified marriage and family therapist unless such person has
2 obtained a certificate from the department for such purpose.

3 Sec. 3. Section 71-107, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 71-107 Every person credentialed under the Uniform
6 Licensing Law to practice a profession shall keep the credential
7 available in an office or place in which he or she practices and
8 shall show such proof of credentialing upon request.

9 On all signs, announcements, stationery, and
10 advertisements of persons credentialed to practice osteopathic
11 medicine, chiropractic, podiatry, optometry, audiology,
12 speech-language pathology, medical nutrition therapy, professional
13 counseling, social work, marriage and family therapy, mental
14 health practice, massage therapy, physical therapy, ~~or~~ alcohol
15 and drug counseling, or perfusion shall be placed the word
16 Osteopathic Physician, Chiropractor, Podiatrist, Optometrist,
17 Audiologist, Speech-Language Pathologist, Medical Nutrition
18 Therapist, Professional Counselor, Social Worker, Master Social
19 Worker, Marriage and Family Therapist, Mental Health Practitioner,
20 Massage Therapist, Physical Therapist, ~~or~~ Alcohol and Drug
21 Counselor, or Perfusionist, as the case may be.

22 Sec. 4. Section 71-110, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 71-110 (1) The credential to practice a profession
25 shall be renewed biennially without examination upon request

1 of the credentialed person and upon documentation of continuing
2 competency pursuant to sections 71-161.09 and 71-161.10. The
3 biennial credential renewals provided for in this section shall
4 be accomplished in such manner as the department, with the approval
5 of the designated professional board, shall establish by rule
6 and regulation. The biennial expiration date in the different
7 professions shall be as follows:

- 8 (a) January, pharmacy and psychology;
- 9 (b) February, funeral directing and embalming;
- 10 (c) March, dentistry and dental hygiene;
- 11 (d) April, podiatry and veterinary medicine and surgery;
- 12 (e) May, athletic training and acupuncture;
- 13 (f) June, respiratory care;
- 14 (g) August, chiropractic and optometry;
- 15 (h) September, alcohol and drug counseling, medical
16 nutrition therapy, mental health practice including any associated
17 certification, and osteopathic medicine;
- 18 (i) October, medicine and surgery and perfusion;
- 19 (j) November, massage therapy and physical therapy; and
- 20 (k) December, audiology and speech-language pathology.

21 The request for renewal need not be in any particular
22 form and shall be accompanied by the renewal fee. Such fee shall be
23 paid not later than the date of the expiration of such credential,
24 except that while actively engaged in the military service of
25 the United States, as defined in the Soldiers' and Sailors' Civil

1 Relief Act of 1940, as the act existed on January 1, 2002, persons
2 credentialed to practice the professions listed in this subsection
3 shall not be required to pay the renewal fee.

4 (2) When a person credentialed pursuant to the Uniform
5 Licensing Law desires to have his or her credential lapse upon
6 expiration, he or she shall notify the department of such desire
7 in writing. The department shall notify the credentialed person in
8 writing of the acceptance or denial of the request to allow the
9 credential to lapse. When the lapsed status becomes effective, the
10 right to represent himself or herself as a credentialed person and
11 to practice the profession in which a license is required shall
12 terminate. To restore the credential from lapsed to active status,
13 such person shall be required to meet the requirements for initial
14 credentialing which are in effect at the time that he or she wishes
15 to restore the credential.

16 (3) When a person credentialed pursuant to the Uniform
17 Licensing Law desires to have his or her credential placed on
18 inactive status upon its expiration, he or she shall notify the
19 department of such desire in writing and pay the inactive status
20 fee. The department shall notify the credentialed person in writing
21 of the acceptance or denial of the request to allow the credential
22 to be placed on inactive status. When the credential is placed on
23 inactive status, the credentialed person shall not engage in the
24 practice of such profession. A credential may remain on inactive
25 status for an indefinite period of time. In order to move a

1 credential from inactive to active status, a person shall be
2 required to meet the requirements for renewal which are in effect
3 at the time he or she wishes to regain active status.

4 (4) At least thirty days before the expiration of a
5 credential, the department shall notify each credentialed person
6 by a letter addressed to him or her at his or her last place of
7 residence as noted upon its records. Any credentialed person who
8 fails to notify the department of his or her desire to let his
9 or her credential lapse or be placed on inactive status upon its
10 expiration or who fails to meet the requirements for renewal on
11 or before the date of expiration of his or her credential shall
12 be given a second notice in the same manner as the first notice
13 advising him or her (a) of the failure to meet the requirements for
14 renewal, (b) that the credential has expired, (c) that the person
15 is subject to an administrative penalty under section 71-164.01 if
16 he or she practices after the expiration date and prior to renewal
17 of the credential, (d) that upon the receipt of the renewal fee
18 and the required late fee within thirty days after the expiration
19 date, no order of revocation will be entered, and (e) that upon the
20 failure to comply with subdivision (d) of this subsection within
21 such time, the credential will be revoked in the manner prescribed
22 in section 71-149.

23 (5) Any credentialed person who desires to reinstate the
24 credential not more than one year after the date of revocation
25 for failure to meet the renewal requirements shall apply to the

1 department for reinstatement. The credential may be reinstated upon
2 the recommendation of the board for his or her profession and the
3 receipt of evidence of meeting the renewal requirements and paying
4 the required late fee.

5 (6) Any credentialed person who desires to reinstate the
6 credential more than one year after the date of revocation for
7 failure to meet the renewal requirements shall petition the board
8 to recommend reinstatement as prescribed in section 71-161.05. The
9 credential may be reinstated upon the recommendation of the board
10 for his or her profession and the receipt of evidence of meeting
11 the renewal requirements and paying the required late fee.

12 Sec. 5. Section 71-112, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 71-112 (1) Professional boards under the Uniform
15 Licensing Law shall be designated as follows:

16 (a) For medicine and surgery, acupuncture, perfusion, and
17 osteopathic medicine and surgery, Board of Medicine and Surgery;

18 (b) For athletic training, Board of Athletic Training;

19 (c) For respiratory care, Board of Respiratory Care
20 Practice;

21 (d) For chiropractic, Board of Chiropractic;

22 (e) For dentistry and dental hygiene, Board of Dentistry;

23 (f) For optometry, Board of Optometry;

24 (g) For massage therapy, Board of Massage Therapy;

25 (h) For physical therapy, Board of Physical Therapy;

- 1 (i) For pharmacy, Board of Pharmacy;
- 2 (j) For audiology and speech-language pathology, Board of
- 3 Audiology and Speech-Language Pathology;
- 4 (k) For medical nutrition therapy, Board of Medical
- 5 Nutrition Therapy;
- 6 (l) For funeral directing and embalming, Board of Funeral
- 7 Directing and Embalming;
- 8 (m) For podiatry, Board of Podiatry;
- 9 (n) For psychology, Board of Psychologists;
- 10 (o) For veterinary medicine and surgery, Board of
- 11 Veterinary Medicine and Surgery;
- 12 (p) For mental health practice, Board of Mental Health
- 13 Practice; and
- 14 (q) For alcohol and drug counseling, Board of Alcohol and
- 15 Drug Counseling.

16 (2) Any change made by the Legislature of the names of

17 boards listed in this section shall not change the membership of

18 such boards or affect the validity of any action taken by or the

19 status of any action pending before any of such boards. Any such

20 board newly named by the Legislature shall be the direct and only

21 successor to the board as previously named.

22 Sec. 6. Section 71-162, Revised Statutes Cumulative

23 Supplement, 2006, is amended to read:

24 71-162 (1) It is the intent of the Legislature that the

25 revenue to cover the cost of the credentialing system administered

1 by the department is to be derived from General Funds, cash funds,
2 federal funds, gifts, grants, or fees from individuals or entities
3 seeking credentials. The credentialing system includes the totality
4 of the credentialing infrastructure and the process of issuance and
5 renewal of credentials, examinations, inspections, investigations,
6 continuing competency, compliance assurance, and the credentialing
7 review process for the following individuals and entities that
8 provide health services and health-related services:

9 (a) Individuals in the practice of acupuncture;
10 advanced practice nursing; alcohol and drug counseling; asbestos
11 abatement, inspection, project design, and training; athletic
12 training; audiology; speech-language pathology; chiropractic;
13 dentistry; dental hygiene; environmental health; hearing aid
14 instrument dispensing and fitting; lead-based paint abatement,
15 inspection, project design, and training; medical nutrition
16 therapy; medical radiography; medication aide services; medicine
17 and surgery; mental health practice; nursing; nursing assistant
18 or paid dining assistant services; nursing home administration;
19 occupational therapy; optometry; osteopathic medicine; perfusion;
20 pharmacy; physical therapy; podiatry; psychology; radon detection,
21 measurement, and mitigation; respiratory care; social work;
22 swimming pool operation; veterinary medicine and surgery; water
23 system operation; constructing or decommissioning water wells and
24 installing water well pumps and pumping equipment; and

25 (b) Individuals in the practice of and entities in the

1 business of body art; cosmetology; electrology; emergency medical
2 services; esthetics; funeral directing and embalming; massage
3 therapy; and nail technology.

4 (2) The department shall determine the cost of the
5 credentialing system for such individuals and entities by
6 calculating the total of the base costs, the variable costs, and
7 any adjustments as provided in sections 71-162.01 to 71-162.03.

8 (3) When fees are to be established pursuant to section
9 71-162.04 for individuals or entities other than individuals in
10 the practice of constructing or decommissioning water wells and
11 installing water well pumps and pumping equipment, the department,
12 upon recommendation of the appropriate board if applicable, shall
13 base the fees on the cost of the credentialing system and shall
14 include usual and customary cost increases, a reasonable reserve,
15 and the cost of any new or additional credentialing activities.
16 For individuals in the practice of constructing or decommissioning
17 water wells and installing water well pumps and pumping equipment,
18 the Water Well Standards and Contractors' Licensing Board shall
19 establish the fees as otherwise provided in this subsection. All
20 such fees shall be collected as provided in section 71-163.

21 Sec. 7. Section 71-168, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 71-168 (1) The department shall enforce the Uniform
24 Licensing Law and for that purpose shall make necessary
25 investigations. Every credentialed person listed under subsection

1 (4) of this section and every member of a professional board shall
2 furnish the department such evidence as he or she may have relative
3 to any alleged violation which is being investigated.

4 (2) Every credentialed person listed under subsection (4)
5 of this section shall report to the department the name of every
6 person without a credential that he or she has reason to believe
7 is engaged in practicing any profession for which a credential is
8 required by the Uniform Licensing Law. The department may, along
9 with the Attorney General and other law enforcement agencies,
10 investigate such reports or other complaints of unauthorized
11 practice. The professional board may issue an order to cease and
12 desist the unauthorized practice of such profession as a measure to
13 obtain compliance with the applicable credentialing requirements by
14 the person prior to referral of the matter to the Attorney General
15 for action. Practice of such profession without a credential after
16 receiving a cease and desist order is a Class III felony.

17 (3) Any credentialed person listed under subsection (4)
18 of this section who is required to file a report of loss or
19 theft of a controlled substance to the federal Drug Enforcement
20 Administration shall provide a copy of such report to the
21 department.

22 (4) Every credentialed person regulated under the
23 Advanced Practice Registered Nurse Licensure Act, the Certified
24 Registered Nurse Anesthetist Act, the Clinical Nurse Specialist
25 Practice Act, the Emergency Medical Services Act, the Licensed

1 Practical Nurse-Certified Act, the Nebraska Certified Nurse
2 Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse
3 Practice Act, the Nurse Practitioner Act, the Occupational Therapy
4 Practice Act, the Uniform Controlled Substances Act, the Uniform
5 Licensing Law except pharmacist interns and pharmacy technicians,
6 the Wholesale Drug Distributor Licensing Act, or sections 71-3702
7 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within
8 thirty days of an occurrence described in this subsection, report
9 to the department in such manner and form as the department may
10 require by rule and regulation whenever he or she:

11 (a) Has first-hand knowledge of facts giving him or
12 her reason to believe that any person in his or her profession
13 has committed acts indicative of gross incompetence, a pattern
14 of negligent conduct as defined in subdivision (5)(e) of section
15 71-147, or unprofessional conduct, may be practicing while his
16 or her ability to practice is impaired by alcohol, controlled
17 substances, narcotic drugs, or physical, mental, or emotional
18 disability, or has otherwise violated such regulatory provisions
19 governing the practice of the profession;

20 (b) Has first-hand knowledge of facts giving him or her
21 reason to believe that any person in another profession regulated
22 under such regulatory provisions has committed acts indicative
23 of gross incompetence or may be practicing while his or her
24 ability to practice is impaired by alcohol, controlled substances,
25 narcotic drugs, or physical, mental, or emotional disability. The

1 requirement to file a report under subdivision (a) or (b) of this
2 subsection shall not apply (i) to the spouse of the person, (ii)
3 to a practitioner who is providing treatment to such person in
4 a practitioner-patient relationship concerning information obtained
5 or discovered in the course of treatment unless the treating
6 practitioner determines that the condition of the person may be of
7 a nature which constitutes a danger to the public health and safety
8 by the person's continued practice, or (iii) when a credentialed
9 person who is chemically impaired enters the Licensee Assistance
10 Program authorized by section 71-172.01 except as provided in such
11 section; or

12 (c) Has been the subject of any of the following actions:

13 (i) Loss of privileges in a hospital or other health
14 care facility due to alleged incompetence, negligence, unethical
15 or unprofessional conduct, or physical, mental, or chemical
16 impairment or the voluntary limitation of privileges or resignation
17 from staff of any health care facility when that occurred while
18 under formal or informal investigation or evaluation by the
19 facility or a committee of the facility for issues of clinical
20 competence, unprofessional conduct, or physical, mental, or
21 chemical impairment;

22 (ii) Loss of employment due to alleged incompetence,
23 negligence, unethical or unprofessional conduct, or physical,
24 mental, or chemical impairment;

25 (iii) Adverse judgments, settlements, or awards arising

1 out of professional liability claims, including settlements made
2 prior to suit in which the patient releases any professional
3 liability claim against the credentialed person, or adverse action
4 by an insurance company affecting professional liability coverage.
5 The department may define by rule and regulation what constitutes
6 a settlement that would be reportable when a credentialed person
7 refunds or reduces a fee or makes no charge for reasons related to
8 a patient or client complaint other than costs;

9 (iv) Denial of a credential or other form of
10 authorization to practice by any state, territory, or jurisdiction,
11 including any military or federal jurisdiction, due to alleged
12 incompetence, negligence, unethical or unprofessional conduct, or
13 physical, mental, or chemical impairment;

14 (v) Disciplinary action against any credential or other
15 form of permit he or she holds taken by another state, territory,
16 or jurisdiction, including any federal or military jurisdiction,
17 the settlement of such action, or any voluntary surrender of or
18 limitation on any such credential or other form of permit;

19 (vi) Loss of membership in a professional organization
20 due to alleged incompetence, negligence, unethical or
21 unprofessional conduct, or physical, mental, or chemical
22 impairment; or

23 (vii) Conviction of any misdemeanor or felony in this or
24 any other state, territory, or jurisdiction, including any federal
25 or military jurisdiction.

1 (5) A report submitted by a professional liability
2 insurance company on behalf of a credentialed person shall
3 be sufficient to satisfy the credentialed person's reporting
4 requirement under subsection (4) of this section.

5 (6) A report made to the department under this section
6 shall be confidential and treated in the same manner as complaints
7 and investigative files under subsection (7) of section 71-168.01.
8 Any person making a report to the department under this section
9 except those self-reporting shall be completely immune from
10 criminal or civil liability of any nature, whether direct or
11 derivative, for filing a report or for disclosure of documents,
12 records, or other information to the department under this section.
13 Persons who are members of committees established under the Patient
14 Safety Improvement Act and sections 25-12,123, 71-2046 to 71-2048,
15 and 71-7901 to 71-7903 or witnesses before such committees shall
16 not be required to report such activities. Any person who is a
17 witness before a committee established under such sections shall
18 not be excused from reporting matters of first-hand knowledge that
19 would otherwise be reportable under this section only because he
20 or she attended or testified before such committee. Documents from
21 original sources shall not be construed as immune from discovery or
22 use in actions under subsection (4) of this section.

23 Sec. 8. Sections 8 to 19 of this act shall be known and
24 may be cited as the Perfusion Practice Act.

25 Sec. 9. The Legislature finds and declares that the

1 public interest requires the regulation of the practice of
2 perfusion and the establishment of clear licensure standards for
3 perfusionists and that the health and welfare of the residents
4 of the State of Nebraska will be protected by identifying to the
5 public those individuals who are qualified and legally authorized
6 to practice perfusion.

7 Sec. 10. For purposes of the Perfusion Practice Act:

8 (1) Board means the Board of Medicine and Surgery;

9 (2) Committee means the Perfusionist Committee created
10 under section 19 of this act;

11 (3) Extracorporeal circulation means the diversion of a
12 patient's blood through a heart-lung machine or a similar device
13 that assumes the functions of the patient's heart, lungs, kidney,
14 liver, or other organs;

15 (4) Perfusion means the functions necessary for the
16 support, treatment, measurement, or supplementation of the
17 cardiovascular, circulatory, and respiratory systems or other
18 organs, or a combination of such activities, and to ensure the safe
19 management of physiologic functions by monitoring and analyzing the
20 parameters of the systems under an order and under the supervision
21 of a licensed physician, including:

22 (a) The use of extracorporeal circulation, long-term
23 cardiopulmonary support techniques including extracorporeal carbon
24 dioxide removal and extracorporeal membrane oxygenation, and
25 associated therapeutic and diagnostic technologies;

1 (b) Counterpulsation, ventricular assistance,
2 autotransfusion, blood conservation techniques, myocardial and
3 organ preservation, extracorporeal life support, and isolated limb
4 perfusion;

5 (c) The use of techniques involving blood management,
6 advanced life support, and other related functions; and

7 (d) In the performance of the acts described in
8 subdivisions (a) through (c) of this subdivision:

9 (i) The administration of:

10 (A) Pharmacological and therapeutic agents; and

11 (B) Blood products or anesthetic agents through the
12 extracorporeal circuit or through an intravenous line as ordered by
13 a physician;

14 (ii) The performance and use of:

15 (A) Anticoagulation monitoring and analysis;

16 (B) Physiologic monitoring and analysis;

17 (C) Blood gas and chemistry monitoring and analysis;

18 (D) Hematologic monitoring and analysis;

19 (E) Hypothermia and hyperthermia;

20 (F) Hemoconcentration and hemodilution; and

21 (G) Hemodialysis; and

22 (iii) The observation of signs and symptoms related to
23 perfusion services, the determination of whether the signs and
24 symptoms exhibit abnormal characteristics, and the implementation
25 of appropriate reporting, clinical perfusion protocols, or changes

1 in, or the initiation of, emergency procedures; and

2 (5) Perfusionist means a person who is licensed to
3 practice perfusion pursuant to the Perfusion Practice Act.

4 Sec. 11. After the effective date of this act, no
5 person shall practice perfusion, whether or not compensation is
6 received or expected, unless the person holds a license to practice
7 perfusion under the Perfusion Practice Act, except that nothing in
8 the act shall be construed to:

9 (1) Prohibit any person credentialed to practice under
10 any other law from engaging in the practice for which he or she is
11 credentialed;

12 (2) Prohibit any student enrolled in a bona fide
13 perfusion training program recognized by the board from performing
14 those duties which are necessary for the student's course of study,
15 if the duties are performed under the supervision and direction
16 of a perfusionist who is on duty and immediately available in the
17 assigned patient care area; or

18 (3) Prohibit any person from practicing perfusion within
19 the scope of his or her official duties when employed by an agency,
20 bureau, or division of the federal government, serving in the
21 Armed Forces or the Public Health Service of the United States, or
22 employed by the Veterans Administration.

23 Sec. 12. To be eligible to be licensed as a perfusionist,
24 an applicant shall fulfill the following requirements:

25 (1) Submit a complete application to the department as

1 required under the Uniform Licensing Law;

2 (2) Pay the fee established and collected as provided in
3 sections 71-162 to 71-162.05;

4 (3) Submit evidence of successful completion of a
5 perfusion education program with standards established by the
6 Accreditation Committee for Perfusion Education and approved by the
7 Commission on Accreditation of Allied Health Education Programs
8 or a program with substantially equivalent education standards
9 approved by the board; and

10 (4) Submit evidence of successful completion of the
11 certification examinations offered by the American Board of
12 Cardiovascular Perfusion, or its successor, or a substantially
13 equivalent examination approved by the board.

14 Sec. 13. The board may waive the education and
15 examination requirements under section 12 of this act for an
16 applicant who:

17 (1) Within one hundred eighty days after the effective
18 date of this act, submits evidence satisfactory to the board that
19 he or she has been operating cardiopulmonary bypass systems for
20 cardiac surgical patients as his or her primary function in a
21 licensed health care facility for at least two of the last ten
22 years prior to the effective date of this act;

23 (2) Submits evidence of holding a current certificate as
24 a Certified Clinical Perfusionist issued by the American Board of
25 Cardiovascular Perfusion, or its successor; or

1 (3) Submits evidence of holding a credential as a
2 perfusionist issued by another state or possession of the
3 United States or the District of Columbia which has standards
4 substantially equivalent to those of this state.

5 Sec. 14. The department shall issue a temporary license
6 to a person who has applied for licensure pursuant to the Perfusion
7 Practice Act and who, in the judgment of the department, with
8 the recommendation of the board, is eligible for examination. An
9 applicant with a temporary license may practice only under the
10 direct supervision of a perfusionist. The board may adopt and
11 promulgate rules and regulations governing such direct supervision
12 which do not require the immediate physical presence of the
13 supervising perfusionist. A temporary license shall expire one year
14 after the date of issuance and may be renewed for a subsequent
15 one-year period, subject to the rules and regulations adopted under
16 the act. A temporary license shall be surrendered to the department
17 upon its expiration.

18 Sec. 15. Each perfusionist shall, in the period since
19 his or her license was issued or last renewed, complete continuing
20 competency activities as required by the board pursuant to section
21 71-161.09 as a prerequisite for the licensee's next subsequent
22 license renewal.

23 Sec. 16. No person shall use the title Perfusionist, the
24 abbreviation LP, or any other title, designation, words, letters,
25 abbreviations, or insignia indicating the practice of perfusion

1 unless licensed to practice perfusion.

2 Sec. 17. The department, with the recommendation of the
3 board, shall adopt and promulgate rules and regulations to carry
4 out the Perfusion Practice Act.

5 Sec. 18. The board shall adopt and publish a code
6 of ethics for perfusionists and maintain a record of every
7 perfusionist licensed in this state which includes his or her
8 place of business, place of residence, and license date and number.

9 Sec. 19. (1) There is created the Perfusionist Committee
10 which shall review and make recommendations to the board regarding
11 all matters relating to perfusionists that come before the board.
12 Such matters shall include, but not be limited to, (a) applications
13 for licensure, (b) perfusionist education, (c) scope of practice,
14 (d) proceedings arising relating to disciplinary actions, (e)
15 perfusionist licensure requirements, and (f) continuing competency.
16 The committee shall be directly responsible to the board.

17 (2) The committee shall be appointed by the State Board
18 of Health and shall be composed of two perfusionists and one
19 physician who has clinical experience with perfusionists. The
20 physician member may also be a member of the Board of Medicine and
21 Surgery. The chairperson of the committee shall be elected by a
22 majority vote of the committee members. All appointments shall be
23 for five-year terms, at staggered intervals. Members shall serve no
24 more than two consecutive terms. Reappointments shall be made by
25 the State Board of Health.

1 (3) The committee shall meet on a regular basis, and
 2 committee members shall, in addition to necessary traveling and
 3 lodging expenses, receive a per diem for each day actually engaged
 4 in the discharge of his or her duties, including compensation for
 5 the time spent in traveling to and from the place of conducting
 6 business. Traveling and lodging expenses shall be reimbursed on
 7 the same basis as provided in sections 81-1174 to 81-1177. The
 8 compensation shall not exceed fifty dollars per day and shall be
 9 determined by the committee with the approval of the department.

10 Sec. 20. Section 71-1,133, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 71-1,133 For purposes of the Uniform Licensing Law, the
 13 practice of optometry means one or a combination of the following:
 14 ~~7 without the use of surgery:~~

15 (1) The examination of the human eye to diagnose, treat,
 16 or refer for consultation or treatment any abnormal condition of
 17 the human eye, ocular adnexa, or visual system;

18 (2) The employment of instruments, devices,
 19 pharmaceutical agents, ~~other than oral therapeutic agents used in~~
 20 ~~the treatment of glaucoma,~~ and procedures intended for the purpose
 21 of investigating, examining, diagnosing, treating, managing, or
 22 correcting visual defects or abnormal conditions of the human eye,
 23 ocular adnexa, or visual system; ~~or for the removal of superficial~~
 24 ~~eyelid, conjunctival, and corneal foreign bodies and the ordering~~
 25 ~~of procedures and laboratory tests rational to the diagnosis of~~

1 ~~conditions or diseases of the human eye, ocular adnexa, or visual~~
 2 ~~system, or~~

3 (3) The prescribing and application of lenses,
 4 devices containing lenses, prisms, contact lenses, ophthalmic
 5 devices, ~~excluding laser surgery,~~ orthoptics, vision training,
 6 pharmaceutical agents, and prosthetic devices to correct, relieve,
 7 or treat defects or abnormal conditions of the human eye, ocular
 8 adnexa, or visual system; ~~—~~

9 (4) The ordering of procedures and laboratory tests
 10 rational to the diagnosis or treatment of conditions or diseases of
 11 the human eye, ocular adnexa, or visual system; and

12 (5) The removal of superficial eyelid, conjunctival, and
 13 corneal foreign bodies.

14 The practice of optometry does not include the use
 15 of surgery, laser surgery, oral therapeutic agents used in the
 16 treatment of glaucoma, oral steroids, or oral immunosuppressive
 17 agents or the treatment of infantile/congenital glaucoma, which
 18 means the condition is present at birth.

19 Sec. 21. Section 71-1,134, Reissue Revised Statutes of
 20 Nebraska, is amended to read:

21 71-1,134 The practice of optometry ~~under sections~~
 22 ~~71-1,133 to 71-1,136.09~~ shall not be construed to:

23 (1) Include merchants or dealers who sell glasses as
 24 merchandise in an established place of business or who sell
 25 contact lenses from a prescription for contact lenses written by an

1 optometrist or a person licensed to practice medicine and surgery
2 and who do not profess to be optometrists or practice optometry; as
3 ~~defined in section 71-1,133;~~

4 (2) Restrict, expand, or otherwise alter the scope of
5 practice governed by other statutes; or

6 (3) Include the performance by an optometric assistant,
7 under the supervision of a licensed optometrist, of duties
8 prescribed in accordance with rules and regulations adopted and
9 promulgated by the department, with the ~~upon~~ recommendation of the
10 Board of Optometry.

11 Sec. 22. Section 71-1,135, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 71-1,135 Every applicant for a license to practice
14 optometry shall: (1) Present proof that he or she is a graduate
15 of an accredited school or college of optometry; and (2) pass an
16 examination approved by the Board of Optometry. ~~After August 25,~~
17 ~~1989, the~~ The examination shall cover all subject matter included
18 in the practice of optometry. ~~as defined in section 71-1,133 for~~
19 ~~applicants who have graduated from an accredited optometry school~~
20 ~~after such date. After October 1, 1997, the examination shall~~
21 ~~cover all subject matter included in the practice of optometry for~~
22 ~~applicants who have graduated from an accredited optometry school~~
23 ~~after such date.~~

24 Sec. 23. Section 71-1,135.02, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 71-1,135.02 ~~(1)(a)~~ Ne (1) An optometrist licensed in
2 this state, ~~except an optometrist who has been certified by~~
3 ~~the department prior to April 30, 1987, or by another state~~
4 ~~with substantially equivalent requirements for certification as~~
5 ~~determined by the department upon recommendation of the Board~~
6 ~~of Optometry to use topical ocular pharmaceutical agents for~~
7 ~~diagnostic purposes prior to April 30, 1987, shall~~ may use topical
8 ocular pharmaceutical agents for diagnostic purposes authorized
9 under subdivision (2) of section 71-1,133 ~~unless if~~ such person ~~(i)~~
10 submits to the ~~board~~ department the required fee and evidence ~~of~~ is
11 certified by the department, with the recommendation of the Board
12 of Optometry, as qualified to use topical ocular pharmaceutical
13 agents for diagnostic purposes. Such certification shall require
14 (a) satisfactory completion of a pharmacology course at an
15 institution accredited by a regional or professional accrediting
16 organization which is recognized by the United States Department
17 of Education and approved by the Department of Health and Human
18 Services Regulation and Licensure, (ii) passes board and passage
19 of an examination approved by the department, and (iii) has
20 been certified by the department upon the recommendation of the
21 board as qualified to use topical ocular pharmaceutical agents
22 for diagnostic purposes. board or (b) evidence provided by the
23 optometrist of certification in another state for use of diagnostic
24 pharmaceutical agents which is deemed by the board as satisfactory
25 validation of such qualifications.

1 ~~(b) The department may approve for certification pursuant~~
2 ~~to subdivision (1)(a)(i) of this section a pharmacology course if~~
3 ~~such course includes:~~

4 ~~(i) A study of ocular anesthetics, mydriatics,~~
5 ~~cycloplegics, ocular toxicity of pharmaceutical agents, ocular~~
6 ~~allergies of ocular agents, and pharmacologic effects of ocular~~
7 ~~drug substances;~~

8 ~~(ii) The consideration of the mechanism of action of~~
9 ~~anesthetics, cycloplegics, and mydriatics in human beings and the~~
10 ~~uses of such substances in the diagnosis of occurring ocular~~
11 ~~disorders;~~

12 ~~(iii) At least one hundred hours of classroom education,~~
13 ~~clinical training, and examination; and~~

14 ~~(iv) The correlation of the utilization of pharmaceutical~~
15 ~~agents and optical instrumentation and procedures.~~

16 ~~(c) The department may approve for certification pursuant~~
17 ~~to subdivision (1)(a)(ii) of this section an examination if such~~
18 ~~examination is:~~

19 ~~(i) Based upon the competencies taught in a pharmacology~~
20 ~~course; and~~

21 ~~(ii) Administered by an institution accredited by~~
22 ~~a regional or professional accrediting organization which is~~
23 ~~recognized by the United States Department of Education and~~
24 ~~approved by the Department of Health and Human Services Regulation~~
25 ~~and Licensure.~~

1 ~~(2)(a) No~~ (2) An optometrist licensed in this state ~~on or~~
2 ~~after April 30, 1987,~~ shall may use topical ocular pharmaceutical
3 agents for therapeutic purposes authorized under subdivision (2) or
4 (3) of section 71-1,133 ~~unless~~ if such person ~~(i)~~ submits to the
5 ~~board~~ department the required fee and ~~evidence of~~ is certified by
6 the department, with the recommendation of the Board of Optometry,
7 as qualified to use ocular pharmaceutical agents for therapeutic
8 purposes, including the treatment of glaucoma. Such certification
9 shall require (a) satisfactory completion of a minimum of one
10 hundred hours since January 1, 1984, of which forty hours shall be
11 classroom education and sixty hours shall be supervised clinical
12 training as it applies to optometry with particular emphasis on
13 which emphasizes the examination, diagnosis, and treatment of
14 the eye, ocular adnexa, and visual system offered by a school
15 or college approved by the department, ~~(ii)~~ passes board and
16 passage of an examination approved by the department, ~~(iii)~~ has
17 been certified by the department upon the recommendation of the
18 board to use topical ocular pharmaceutical agents for therapeutic
19 purposes, and ~~(iv)~~ has been certified by the department upon the
20 recommendation of the board to use topical ocular pharmaceutical
21 agents for diagnostic purposes. board or (b) evidence provided by
22 the optometrist of certification in another state for the use of
23 therapeutic pharmaceutical agents which is deemed by the board as
24 satisfactory validation of such qualifications.

25 ~~(b) The department may approve for certification pursuant~~

1 to subdivision ~~(2)(a)(i)~~ of this section a therapeutic course
2 or courses of instruction, from an institution accredited by
3 a regional or professional accrediting organization which is
4 recognized by the United States Department of Education, that
5 have been completed after January 1, 1984. Such course or courses
6 shall include, but not be limited to:

7 ~~(i) Review of general pharmacology and therapeutics;~~
8 ~~(ii) Review of ocular therapeutic pharmacology;~~
9 ~~(iii) Diagnosis and treatment of diseases of the eye,~~
10 ~~ocular adnexa, and visual system;~~

11 ~~(iv) Diagnosis of corneal disease and trauma including~~
12 ~~corneal foreign bodies;~~

13 ~~(v) Diagnosis and treatment of anterior segment eye~~
14 ~~diseases;~~

15 ~~(vi) Clinical procedures related to the diagnosis and~~
16 ~~treatment of the eye, ocular adnexa, and visual system;~~

17 ~~(vii) Ocular manifestations of systemic disease;~~

18 ~~(viii) Review of systemic disease syndromes;~~

19 ~~(ix) Ocular therapy including management of acute~~
20 ~~systemic emergencies; and~~

21 ~~(x) Consultation criteria in ocular disease and trauma.~~

22 ~~(3)(a) An optometrist who is licensed and certified to~~
23 ~~use pharmaceutical agents for therapeutic purposes on July 15,~~
24 ~~1998, who graduated from an accredited school of optometry prior~~
25 ~~to January 1, 1996, shall complete the educational requirements~~

1 relative to the treatment of glaucoma, as determined by the board,
2 prior to January 1, 2000, and shall complete such educational
3 requirements prior to treating glaucoma. Failure to complete such
4 education prior to January 1, 2000, shall result in the revocation
5 of the licensee's certification to use pharmaceutical agents for
6 therapeutic purposes.

7 (b) An optometrist who applies for licensure on or
8 after July 15, 1998, who graduated from an accredited school
9 of optometry prior to January 1, 1996, shall complete the
10 educational requirements relative to the treatment of glaucoma,
11 as determined by the board, prior to being issued a license to
12 practice optometry.

13 (c) An optometrist who graduated from an accredited
14 school of optometry after January 1, 1996, shall be deemed to
15 have met the educational requirements for certification to use
16 pharmaceutical agents for therapeutic purposes which includes the
17 treatment and management of glaucoma.

18 (3) After January 1, 2000, only an optometrist licensed
19 in this state prior to April 30, 1987, may practice optometry
20 without meeting the requirements and obtaining certification
21 required by subsections (1) and (2) of this section.

22 Sec. 24. Section 71-1,135.04, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-1,135.04 In issuing a license or renewal, the Board of
25 Optometry shall state whether such person licensed in the practice

1 of optometry has been certified to use pharmaceutical agents
2 pursuant to section 71-1,135.02 and shall determine an appropriate
3 means to further identify those persons who are certified in the
4 diagnostic use of such agents ~~as provided in subdivision (2) of~~
5 ~~section 71-1,133~~ or the therapeutic use of such agents. ~~as provided~~
6 ~~in subdivision (2) or (3) of section 71-1,133.~~

7 Sec. 25. Section 71-1,135.06, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 71-1,135.06 ~~(1)~~ A licensed optometrist who administers or
10 prescribes pharmaceutical agents for examination or for treatment
11 shall provide the same standard of care to patients as that
12 provided by a physician licensed in this state to practice
13 medicine and surgery utilizing the same pharmaceutical agents
14 for examination or treatment.

15 ~~(2) A licensed optometrist who administers or prescribes~~
16 ~~pharmaceutical agents for the treatment of glaucoma shall provide~~
17 ~~the same standard of care to patients as that provided by a~~
18 ~~physician licensed in this state to practice medicine and surgery~~
19 ~~utilizing the same pharmaceutical agents for the examination and~~
20 ~~treatment of glaucoma.~~

21 Sec. 26. Section 71-1,136, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-1,136 No school of optometry shall be approved by the
24 ~~Department of Health and Human Services Regulation and Licensure~~
25 Board of Optometry as an accredited school unless the school is

1 accredited by a regional or professional accrediting organization
2 which is recognized by the United States Department of Education.

3 Sec. 27. Section 71-1,136.01, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-1,136.01 Each Nebraska-licensed optometrist in active
6 practice within the State of Nebraska shall, on or before August
7 1 of each even-numbered year, complete continuing competency
8 activities as required by the Board of Optometry pursuant to
9 section 71-161.09 as a prerequisite for the licensee's next
10 subsequent license renewal. In addition to circumstances determined
11 by the department to be beyond the credential holder's control
12 pursuant to section 71-161.10, such circumstances shall include
13 situations in which the credential holder was initially licensed
14 within the twenty-six months immediately preceding the renewal
15 date.

16 Sec. 28. Section 71-1,136.04, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-1,136.04 No agencies of the state or its subdivisions
19 administering relief, public assistance, public welfare assistance,
20 or other health service under the laws of this state, including
21 the public schools, shall in the performance of their duties,
22 interfere with any patient's freedom of choice in the selection of
23 practitioners licensed to perform examinations ~~for refractions or~~
24 ~~corrections~~ and provide treatment within the field for which their
25 respective licenses entitle them to practice.

1 Sec. 29. Section 71-1,142, Revised Statutes Cumulative
2 Supplement, 2006, as amended by section 344, Legislative Bill 296,
3 One Hundredth Legislature, First Session, 2007, is amended to read:

4 71-1,142 For purposes of sections 71-1,142 to 71-1,151
5 and sections 31 to 38 of this act and elsewhere in the Uniform
6 Licensing Law, unless the context otherwise requires:

7 (1) Practice of pharmacy means (a) the interpretation,
8 evaluation, and implementation of a medical order, (b) the
9 dispensing of drugs and devices, (c) drug product selection,
10 (d) the administration of drugs or devices, (e) drug utilization
11 review, (f) patient counseling, (g) the provision of pharmaceutical
12 care, and (h) the responsibility for compounding and labeling of
13 dispensed or repackaged drugs and devices, proper and safe storage
14 of drugs and devices, and maintenance of proper records. The active
15 practice of pharmacy means the performance of the functions set
16 out in this subdivision by a pharmacist as his or her principal or
17 ordinary occupation;

18 (2) Administer means to directly apply a drug or device
19 by injection, inhalation, ingestion, or other means to the body of
20 a patient or research subject;

21 (3) Administration means the act of (a) administering,
22 (b) keeping a record of such activity, and (c) observing,
23 monitoring, reporting, and otherwise taking appropriate action
24 regarding desired effect, side effect, interaction, and
25 contraindication associated with administering the drug or device;

1 (4) Board means the Board of Pharmacy;

2 (5) Caregiver means any person acting as an agent on
3 behalf of a patient or any person aiding and assisting a patient;

4 (6) Chart order means an order for a drug or device
5 issued by a practitioner for a patient who is in the hospital
6 where the chart is stored or for a patient receiving detoxification
7 treatment or maintenance treatment pursuant to section 28-412.
8 Chart order does not include a prescription;

9 (7) Compounding means the preparation of components into
10 a drug product (a) as the result of a practitioner's medical order
11 or initiative occurring in the course of practice based upon the
12 relationship between the practitioner, patient, and pharmacist or
13 (b) for the purpose of, or as an incident to, research, teaching,
14 or chemical analysis and not for sale or dispensing. Compounding
15 includes the preparation of drugs or devices in anticipation of
16 receiving medical orders based upon routine, regularly observed
17 prescribing patterns;

18 (8) Delegated dispensing means the practice of pharmacy
19 by which one or more pharmacists have jointly agreed, on a
20 voluntary basis, to work in conjunction with one or more persons
21 pursuant to sections 71-1,147.42 to 71-1,147.64 under a protocol
22 which provides that such person may perform certain dispensing
23 functions authorized by the pharmacist or pharmacists under certain
24 specified conditions and limitations;

25 (9) Deliver or delivery means to actually,

1 constructively, or attempt to transfer a drug or device from one
2 person to another, whether or not for consideration;

3 (10) Department means the Division of Public Health of
4 the Department of Health and Human Services;

5 (11) Device means an instrument, apparatus, implement,
6 machine, contrivance, implant, in vitro reagent, or other similar
7 or related article, including any component, part, or accessory,
8 which is prescribed by a practitioner and dispensed by a pharmacist
9 or other person authorized by law to do so;

10 (12) Dialysis drug or device distributor means a
11 manufacturer or wholesaler who provides dialysis drugs, solutions,
12 supplies, or devices, to persons with chronic kidney failure for
13 self-administration at the person's home or specified address,
14 pursuant to a prescription;

15 (13) Dialysis drug or device distributor worker means a
16 person working for a dialysis drug or device distributor with a
17 delegated dispensing permit who has completed the approved training
18 and has demonstrated proficiency to perform the task or tasks of
19 assembling, labeling, or delivering drugs or devices pursuant to a
20 prescription;

21 (14) Dispense or dispensing means interpreting,
22 evaluating, and implementing a medical order, including preparing
23 and delivering a drug or device to a patient or caregiver
24 in a suitable container appropriately labeled for subsequent
25 administration to, or use by, a patient. Dispensing includes (a)

1 dispensing incident to practice, (b) dispensing pursuant to a
2 delegated dispensing permit, (c) dispensing pursuant to a medical
3 order, and (d) any transfer of a prescription drug or device to a
4 patient or caregiver other than by administering;

5 (15) Distribute means to deliver a drug or device, other
6 than by administering or dispensing;

7 (16) Facility means a health care facility as defined in
8 section 71-413;

9 (17) Hospital has the same meaning as in section 71-419;

10 (18) Person means an individual, corporation,
11 partnership, limited liability company, association, or other legal
12 entity;

13 (19) Labeling means the process of preparing and affixing
14 a label to any drug container or device container, exclusive
15 of the labeling by a manufacturer, packer, or distributor of
16 a nonprescription drug or commercially packaged legend drug or
17 device. Any such label shall include all information required by
18 federal and state law or regulation;

19 (20) Medical order means a prescription, a chart order,
20 or an order for pharmaceutical care issued by a practitioner;

21 (21) Pharmaceutical care means the provision of drug
22 therapy for the purpose of achieving therapeutic outcomes that
23 improve a patient's quality of life. Such outcomes include (a) the
24 cure of disease, (b) the elimination or reduction of a patient's
25 symptomatology, (c) the arrest or slowing of a disease process, or

1 (d) the prevention of a disease or symptomatology. Pharmaceutical
2 care includes the process through which the pharmacist works in
3 concert with the patient and his or her caregiver, physician, or
4 other professionals in designing, implementing, and monitoring a
5 therapeutic plan that will produce specific therapeutic outcomes
6 for the patient;

7 (22) Pharmacist means any person who is licensed by the
8 State of Nebraska to practice pharmacy;

9 (23) Pharmacy has the same meaning as in section 71-425;

10 (24) Drugs, medicines, and medicinal substances means (a)
11 articles recognized in the official United States Pharmacopoeia,
12 the Homeopathic Pharmacopoeia of the United States, the official
13 National Formulary, or any supplement to any of them, (b) articles
14 intended for use in the diagnosis, cure, mitigation, treatment, or
15 prevention of diseases in humans or animals, (c) articles, except
16 food, intended to affect the structure or any function of the
17 body of a human or an animal, (d) articles intended for use as a
18 component of any articles specified in subdivision (a), (b), or (c)
19 of this subdivision, except any device or its components, parts, or
20 accessories, and (e) prescription drugs or devices as defined in
21 subdivision (31) of this section;

22 (25) Patient counseling means the verbal communication
23 by a pharmacist, pharmacist intern, or practitioner, in a manner
24 reflecting dignity and the right of the patient to a reasonable
25 degree of privacy, of information to the patient or caregiver in

1 order to improve therapeutic outcomes by maximizing proper use of
2 prescription drugs and devices and also includes the duties set out
3 in section 71-1,147.35;

4 (26) Pharmacist in charge means a pharmacist who is
5 designated on a pharmacy license or designated by a hospital as
6 being responsible for the practice of pharmacy in the pharmacy
7 for which a pharmacy license is issued and who works within the
8 physical confines of such pharmacy for a majority of the hours
9 per week that the pharmacy is open for business averaged over a
10 twelve-month period or thirty hours per week, whichever is less;

11 (27) Pharmacist intern means a person who meets the
12 requirements of section 71-1,144;

13 (28) Pharmacy technician means an individual at least
14 eighteen years of age who is a high school graduate or officially
15 recognized by the State Department of Education as possessing the
16 equivalent degree of education, who has never been convicted of
17 any drug-related misdemeanor or felony, and who, under the written
18 control procedures and guidelines of an employing pharmacy, may
19 perform those functions which do not require professional judgment
20 and which are subject to verification to assist a pharmacist in the
21 practice of pharmacy, registered under sections 31 to 38 of this
22 act;

23 (29) Practitioner means a certified registered nurse
24 anesthetist, a certified nurse midwife, a dentist, an optometrist,
25 a nurse practitioner, a physician assistant, a physician, a

1 podiatrist, or a veterinarian;

2 (30) Prescribe means to issue a medical order;

3 (31) Prescription drug or device or legend drug or
4 device means (a) a drug or device which is required under
5 federal law to be labeled with one of the following statements
6 prior to being dispensed or delivered: (i) Caution: Federal law
7 prohibits dispensing without prescription; (ii) Caution: Federal
8 law restricts this drug to use by or on the order of a licensed
9 veterinarian; or (iii) "Rx Only" or (b) a drug or device which is
10 required by any applicable federal or state law to be dispensed
11 pursuant only to a prescription or chart order or which is
12 restricted to use by practitioners only;

13 (32) Prescription means an order for a drug or device
14 issued by a practitioner for a specific patient, for emergency use,
15 or for use in immunizations. Prescription does not include a chart
16 order;

17 (33) Nonprescription drugs means nonnarcotic medicines or
18 drugs which may be sold without a medical order and which are
19 prepackaged for use by the consumer and labeled in accordance with
20 the requirements of the laws and regulations of this state and the
21 federal government;

22 (34) Public health clinic worker means a person in a
23 public health clinic with a delegated dispensing permit who has
24 completed the approved training and has demonstrated proficiency
25 to perform the task of dispensing authorized refills of oral

1 contraceptives pursuant to a written prescription;

2 (35) Public health clinic means the department, any
3 county, city-county, or multicounty health department, or any
4 private not-for-profit family planning clinic licensed as a health
5 clinic as defined in section 71-416;

6 (36) Signature means the name, word, or mark of a person
7 written in his or her own hand with the intent to authenticate a
8 writing or other form of communication or a digital signature which
9 complies with section 86-611 or an electronic signature;

10 (37) Supervision means the immediate personal guidance
11 and direction by the licensed pharmacist on duty in the facility of
12 the performance by a pharmacy technician of authorized activities
13 or functions subject to verification by such pharmacist, except
14 that when a pharmacy technician performs authorized activities or
15 functions to assist a pharmacist on duty in the facility when the
16 prescribed drugs or devices will be administered by a licensed
17 staff member or consultant or by a licensed physician assistant to
18 persons who are patients or residents of a facility, the activities
19 or functions of such pharmacy technician shall only be subject to
20 verification by a pharmacist on duty in the facility;

21 (38) Verification means the confirmation by a supervising
22 pharmacist of the accuracy and completeness of the acts, tasks,
23 or functions undertaken by a pharmacy technician to assist the
24 pharmacist in the practice of pharmacy;

25 (39) Written control procedures and guidelines means

1 the document prepared and signed by the pharmacist in charge
2 and approved by the board which specifies the manner in which
3 basic levels of competency of pharmacy technicians employed by
4 the pharmacy are determined, the manner in which supervision is
5 provided, the manner in which the functions of pharmacy technicians
6 are verified, the maximum ratio of pharmacy technicians to one
7 pharmacist used in the pharmacy, and guidelines governing the use
8 of pharmacy technicians and the functions which they may perform;

9 (40) Medical gas distributor means a person who dispenses
10 medical gases to a patient or ultimate user but does not include a
11 person who manufactures medical gases or a person who distributes,
12 transfers, delivers, dispenses, or sells medical gases to a person
13 other than a patient or ultimate user;

14 (41) Facsimile means a copy generated by a system that
15 encodes a document or photograph into electrical signals, transmits
16 those signals over telecommunications lines, and reconstructs the
17 signals to create an exact duplicate of the original document at
18 the receiving end;

19 (42) Electronic signature has the same definition found
20 in section 86-621; and

21 (43) Electronic transmission means transmission of
22 information in electronic form. Electronic transmission may
23 include computer-to-computer transmission or computer-to-facsimile
24 transmission.

25 Sec. 30. Section 71-1,147, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-1,147 (1) Except as provided for pharmacy technicians
3 in ~~section 71-1,147.33~~ sections 31 to 38 of this act and for
4 individuals authorized to dispense under a delegated dispensing
5 permit, no person other than a licensed pharmacist, a pharmacist
6 intern, or a practitioner with a pharmacy license shall provide
7 pharmaceutical care, compound and dispense drugs or devices, or
8 dispense pursuant to a medical order. Notwithstanding any other
9 provision of law to the contrary, a pharmacist or pharmacist intern
10 may dispense drugs or devices pursuant to a medical order of
11 a practitioner authorized to prescribe in another state if such
12 practitioner could be authorized to prescribe such drugs or devices
13 in this state.

14 (2) Except as provided for pharmacy technicians in
15 ~~section 71-1,147.33~~ sections 31 to 38 of this act and for
16 individuals authorized to dispense under a delegated dispensing
17 permit, it shall be unlawful for any person to permit or direct a
18 person who is not a pharmacist intern, a licensed pharmacist, or
19 a practitioner with a pharmacy license to provide pharmaceutical
20 care, compound and dispense drugs or devices, or dispense pursuant
21 to a medical order.

22 (3) It shall be unlawful for any person to coerce
23 or attempt to coerce a pharmacist to enter into a delegated
24 dispensing agreement or to supervise any pharmacy technician for
25 any purpose or in any manner contrary to the professional judgment

1 of the pharmacist. Violation of this subsection by a health care
2 professional regulated pursuant to the provisions of Chapter 71
3 shall be considered an act of unprofessional conduct. A violation
4 of this subsection by a facility shall be prima facie evidence
5 in an action against the license of the facility pursuant to the
6 Health Care Facility Licensure Act. Any pharmacist subjected to
7 coercion or attempted coercion pursuant to this subsection has a
8 cause of action against the person and may recover his or her
9 damages and reasonable attorney's fees.

10 (4) Violation of this section by an unlicensed person
11 shall be a Class III misdemeanor.

12 Sec. 31. (1) All pharmacy technicians employed by a
13 facility licensed under the Health Care Facility Licensure Act
14 shall be registered with the Pharmacy Technician Registry created
15 in section 34 of this act.

16 (2) To register as a pharmacy technician, an individual
17 shall (a) be at least eighteen years of age, (b) be a high
18 school graduate or be officially recognized by the State Department
19 of Education as possessing the equivalent degree of education,
20 (c) have never been convicted of any nonalcohol, drug-related
21 misdemeanor or felony, (d) file an application with the department,
22 and (e) pay the applicable fee.

23 (3) A pharmacy technician shall apply for registration
24 as provided in this section within thirty days after being hired
25 by a pharmacy or facility. Pharmacy technicians employed in that

1 capacity on the effective date of this act shall apply for
2 registration within thirty days after the effective date of this
3 act.

4 Sec. 32. (1) A pharmacy technician shall only perform
5 tasks which do not require professional judgment and which are
6 subject to verification to assist a pharmacist in the practice of
7 pharmacy.

8 (2) The functions and tasks which shall not be performed
9 by pharmacy technicians include, but are not limited to:

10 (a) Receiving oral medical orders from a practitioner or
11 his or her agent;

12 (b) Providing patient counseling;

13 (c) Performing any evaluation or necessary clarification
14 of a medical order or performing any functions other than strictly
15 clerical functions involving a medical order;

16 (d) Supervising or verifying the tasks and functions of
17 pharmacy technicians;

18 (e) Interpreting or evaluating the data contained in a
19 patient's record maintained pursuant to section 71-1,147.35;

20 (f) Releasing any confidential information maintained by
21 the pharmacy;

22 (g) Performing any professional consultations; and

23 (h) Drug product selection, with regard to an individual
24 medical order, in accordance with the Nebraska Drug Product
25 Selection Act.

1 (3) The director shall, with the recommendation of the
2 board, waive any of the limitations in subsection (2) of this
3 section for purposes of a scientific study of the role of pharmacy
4 technicians approved by the board. Such study shall be based
5 upon providing improved patient care or enhanced pharmaceutical
6 care. Any such waiver shall state the length of the study and
7 shall require that all study data and results be made available
8 to the board upon the completion of the study. Nothing in this
9 subsection requires the board to approve any study proposed under
10 this subsection.

11 Sec. 33. (1) A pharmacy employing pharmacy technicians
12 shall be responsible for the supervision and performance of the
13 pharmacy technicians.

14 (2) The pharmacist in charge shall be responsible
15 for the practice of pharmacy and the establishment of written
16 control procedures and guidelines governing the qualifications,
17 onsite training, functions, supervision, and verification of the
18 performance of pharmacy technicians. The supervision of such
19 technicians at the place of employment shall be performed by
20 the licensed pharmacist who is on duty in the facility with the
21 pharmacy technicians.

22 (3)(a) Each pharmacy shall document, in a manner
23 and method specified in the written control procedures and
24 guidelines, the basic competence of the pharmacy technician prior
25 to performance of tasks and functions by such technician. Such

1 basic competence shall include, but not be limited to:

2 (i) Basic pharmaceutical nomenclature;

3 (ii) Metric system measures, both liquid and solid;

4 (iii) The meaning and use of Roman numerals;

5 (iv) Abbreviations used for dosages and directions to
6 patients;

7 (v) Basic medical terms, including terms relating to
8 ailments, diseases, or infirmities;

9 (vi) The use and operation of automated dispensing and
10 record-keeping systems if used by the employing pharmacy;

11 (vii) Applicable statutes, rules, and regulations
12 governing the preparation, compounding, dispensing, and
13 distribution of drugs or devices, record keeping with regard to
14 such functions, and the employment, use, and functions of pharmacy
15 technicians; and

16 (viii) The contents of the written control procedures and
17 guidelines.

18 (b) Written control procedures and guidelines shall
19 specify the functions that pharmacy technicians may perform in the
20 employing pharmacy. The written control procedures and guidelines
21 shall specify the means used by the employing pharmacy to verify
22 that the prescribed drug or device, the dosage form, and the
23 directions provided to the patient or caregiver conform to the
24 medical order authorizing the drug or device to be dispensed.

25 (c) The written control procedures and guidelines shall

1 specify the manner in which the verification made prior to
2 dispensing is documented.

3 (4) Each pharmacy or facility shall, before using
4 pharmacy technicians, file with the board a copy of its written
5 control procedures and guidelines and receive approval of its
6 written control procedures and guidelines from the board. The
7 board shall, within ninety days after the filing of such written
8 control procedures and guidelines, review and either approve or
9 disapprove them. The board shall notify the pharmacy or facility
10 of the approval or disapproval. The board or its representatives
11 shall have access to the approved written control procedures
12 and guidelines upon request. Any written control procedures and
13 guidelines for supportive pharmacy personnel that were filed by a
14 pharmacy and approved by the board prior to the effective date of
15 this act shall be deemed to be approved and to apply to pharmacy
16 technicians.

17 Sec. 34. (1) The Pharmacy Technician Registry is created.
18 The department shall list each pharmacy technician registration in
19 the registry. A listing in the registry shall be valid for the term
20 of the registration and upon renewal unless such listing is refused
21 renewal or is removed as provided in section 35 of this act.

22 (2) The registry shall contain the following information
23 on each individual who meets the conditions set out in section
24 31 of this act: (a) The individual's full name; (b) information
25 necessary to identify the individual; (c) any conviction of a

1 nonalcohol, drug-related felony or misdemeanor reported to the
2 department; and (d) any other information as the department may
3 require by rule and regulation.

4 Sec. 35. (1) A registration to practice as a pharmacy
5 technician may be denied, refused renewal, removed, or suspended
6 or have other disciplinary measures taken against it by the
7 department, with the recommendation of the board, for failure to
8 meet the requirements of or for violation of sections 31 to 38 of
9 this act or the rules and regulations adopted under such sections.

10 (2) If the department proposes to deny, refuse renewal
11 of, or remove or suspend a registration, it shall send the
12 applicant or registrant a notice setting forth the action to be
13 taken and the reasons for the determination. The denial, refusal to
14 renew, removal, or suspension shall become final thirty days after
15 mailing the notice unless the applicant or registrant gives written
16 notice to the department of his or her desire for an informal
17 conference or for a formal hearing.

18 (3) Notice may be served by any method specified in
19 section 25-505.01, or the department may permit substitute or
20 constructive service as provided in section 25-517.02 when service
21 cannot be made with reasonable diligence by any of the methods
22 specified in section 25-505.01.

23 (4) Pharmacy technicians may participate in the Licensee
24 Assistance Program described in section 71-172.01.

25 Sec. 36. (1) If a pharmacy technician performs

1 functions requiring professional judgment and licensure as a
2 pharmacist, performs functions not specified under approved written
3 control procedures and guidelines, or performs functions without
4 supervision and such acts are known to the pharmacist supervising
5 the pharmacy technician or the pharmacist in charge or are of such
6 a nature that they should have been known to a reasonable person,
7 such acts may be considered acts of unprofessional conduct on the
8 part of the pharmacist supervising the pharmacy technician or the
9 pharmacist in charge pursuant to section 71-147, and disciplinary
10 measures may be taken against such pharmacist supervising the
11 pharmacy technician or the pharmacist in charge pursuant to the
12 Uniform Licensing Law.

13 (2) Acts described in subsection (1) of this section
14 may be grounds for the department, with the recommendation of the
15 board, to apply to the district court in the judicial district in
16 which the pharmacy is located for an order to cease and desist
17 from the performance of any unauthorized acts. On or at any time
18 after such application the court may, in its discretion, issue an
19 order restraining such pharmacy or its agents or employees from the
20 performance of unauthorized acts. After a hearing the court shall
21 either grant or deny the application. Such order shall continue
22 until the court, after a hearing, finds the basis for such order
23 has been removed.

24 Sec. 37. A person whose registration has been denied,
25 refused renewal, removed, or suspended from the Pharmacy Technician

1 Registry may reapply for registration or for lifting of the
2 disciplinary sanction at any time in accordance with the rules and
3 regulations adopted and promulgated by the department.

4 Sec. 38. A pharmacy technician shall report first-hand
5 knowledge of facts giving him or her reason to believe that
6 any person in his or her profession, or any person in another
7 profession under the regulatory provisions of the department, may
8 be practicing while his or her ability to practice is impaired by
9 alcohol, controlled substances, or narcotic drugs. A report made
10 to the department under this section shall be confidential. Any
11 person making a report to the department under this section, except
12 for those self-reporting, shall be completely immune from criminal
13 or civil liability of any nature, whether direct or derivative,
14 for filing a report or for disclosure of documents, records,
15 or other information to the department under this section. The
16 immunity granted by this section shall not apply to any person
17 causing damage or injury by his or her willful, wanton, or grossly
18 negligent act of commission or omission.

19 Sec. 39. For purposes of sections 39 to 42 of this act:

20 (1) Activities of daily living has the definition found
21 in section 71-6602;

22 (2) Attendant services means services provided to
23 nonmedically fragile persons, including hands-on assistance
24 with activities of daily living, transfer, grooming, medication
25 reminders, and similar activities;

1 (3) Companion services means the provision of
2 companionship and assistance with letter writing, reading, and
3 similar activities;

4 (4) Homemaker services means assistance with household
5 tasks, including, but not limited to, housekeeping, personal
6 laundry, shopping, incidental transportation, and meals;

7 (5) In-home personal services means attendant services,
8 companion services, and homemaker services that do not require
9 the exercise of medical or nursing judgment provided to a person
10 in his or her residence to enable the person to remain safe and
11 comfortable in such residence;

12 (6) In-home personal services agency means an entity
13 that provides or offers to provide in-home personal services
14 for compensation by employees of the agency or by persons with
15 whom the agency has contracted to provide such services. In-home
16 personal services agency does not include a local public health
17 department as defined in section 71-1626, a health care facility
18 as defined in section 71-413, a health care service as defined in
19 section 71-415, programs supported by the federal Corporation for
20 National and Community Service, an unlicensed home care registry or
21 similar entity that screens and schedules independent contractors
22 as caregivers for persons, or an agency that provides only
23 housecleaning services. A home health agency may be an in-home
24 personal services agency; and

25 (7) In-home personal services worker means a person who

1 meets the requirements of section 40 of this act and provides
2 in-home personal services.

3 Sec. 40. An in-home personal services worker:

4 (1) Shall be at least eighteen years of age;

5 (2) Shall have good moral character;

6 (3) Shall not have been convicted of a crime under the
7 laws of Nebraska or another jurisdiction, the penalty for which is
8 imprisonment for a period of more than one year and which crime is
9 rationally related to the person's fitness or capacity to act as an
10 in-home personal services worker;

11 (4) Shall have no adverse findings on the Adult
12 Protective Services Central Registry, the central register created
13 in section 28-718, the Medication Aide Registry, the Nurse Aide
14 Registry, or the central registry maintained by the sex offender
15 registration and community notification division of the Nebraska
16 State Patrol pursuant to section 29-4004;

17 (5) Shall be able to speak and understand the English
18 language or the language of the person for whom he or she is
19 providing in-home personal services; and

20 (6) Shall have training sufficient to provide the
21 requisite level of in-home personal services offered.

22 Sec. 41. An in-home personal services agency shall employ
23 or contract with only persons who meet the requirements of section
24 40 of this act to provide in-home personal services. The in-home
25 personal services agency shall perform or cause to be performed a

1 criminal history record information check on each in-home personal
2 services worker and a check of his or her driving record as
3 maintained by the Department of Motor Vehicles or by any other
4 state which has issued an operator's license to the in-home
5 personal services worker, when driving is a service provided by the
6 in-home personal services worker, and shall maintain documentation
7 of such checks in its records for inspection at its place of
8 business.

9 Sec. 42. Sections 39 to 41 of this act do not apply to
10 the performance of health maintenance activities by designated care
11 aides pursuant to section 71-1,132.30 or to persons who provide
12 personal assistant services, respite care or habilitation services,
13 or aged and disabled services.

14 Sec. 43. Section 71-415, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-415 Health care service means an adult day service, a
17 home health agency, a hospice or hospice service, or a respite care
18 service. Health care service does not include an in-home personal
19 services agency as defined in section 39 of this act.

20 Sec. 44. Section 71-6720, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-6720 (1) The purposes of the Medication Aide Act
23 are to ensure the health, safety, and welfare of the public by
24 providing for the accurate, cost-effective, efficient, and safe
25 utilization of medication aides to assist in the administration of

1 medications by ~~(1)~~ (a) competent individuals, ~~(2)~~ (b) caretakers
 2 who are parents, foster parents, family, friends or legal
 3 guardians, and ~~(3)~~ (c) licensed health care professionals.

4 (2) The act applies to all settings in which medications
 5 are administered except the home, unless the in-home administration
 6 of medication is - The act does apply to medication administered
 7 in the home when provided through a licensed home health agency or
 8 licensed or certified home and community-based provider.

9 (3) The act does not apply to the provision of reminders
 10 to persons to self-administer medication or assistance to persons
 11 in the delivery of nontherapeutic topical applications by in-home
 12 personal services workers. For purposes of this subsection, in-home
 13 personal services worker has the definition found in section 39 of
 14 this act.

15 Sec. 45. If any section in this act or any part of any
 16 section is declared invalid or unconstitutional, the declaration
 17 shall not affect the validity or constitutionality of the remaining
 18 portions.

19 Sec. 46. Original sections 71-1,133, 71-1,134, 71-1,135,
 20 71-1,135.02, 71-1,135.04, 71-1,135.06, 71-1,136, 71-1,136.01,
 21 71-1,136.04, 71-1,147, 71-415, and 71-6720, Reissue Revised
 22 Statutes of Nebraska, sections 71-107, 71-110, 71-112, 71-162,
 23 and 71-168, Revised Statutes Cumulative Supplement, 2006, and
 24 sections 71-101, 71-102, and 71-1,142, Revised Statutes Cumulative
 25 Supplement, 2006, as amended by sections 296, 297, and 344,

1 respectively, Legislative Bill 296, One Hundredth Legislature,
2 First Session, 2007, are repealed.

3 Sec. 47. The following sections are outright repealed:
4 Sections 71-1,135.03, 71-1,135.05, and 71-1,147.34, Reissue Revised
5 Statutes of Nebraska, and section 71-1,147.33, Revised Statutes
6 Cumulative Supplement, 2006.